

# ARTICLE 9

## GRIEVANCES

- 1. Common Goal:** The purpose of this article is to provide a mutually acceptable method for the expeditious resolution of workplace issues raised by the parties and/or employees pursuant to Title 5, United States Code (U.S.C.) 7121. The Parties agree that grievances should be resolved in an orderly, efficient, and equitable manner that will maintain the self-respect of the employee and be consistent with the principles of good management and the public interest. The Parties are committed to making every effort at resolving issues at the lowest level possible. The parties are encouraged to use technologies that reduce the need for travel.
- 2. Grievance Prevention:** Most grievances arise from misunderstandings or disputes that can be resolved promptly and satisfactorily on an informal basis. To resolve issues that may result in grievances, potential grievants are encouraged to contact and discuss their concerns with the other party. However, such discussions prior to the start of the grievance process do not extend any time frames unless mutually agreed to in writing.
- 3. Definitions:** Grievance means any complaint by any—
  - a. Employee concerning any matter relating to his or her employment.
  - b. Labor organization concerning any matter relating to the employment of any employee.
  - c. Employee, Labor organization, or Agency concerning—
    - (1) The effect or interpretation, or a claim of breach, of a collective bargaining agreement.
    - (2) Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.
- 4. Application:**
  - a. A grievance may be filed by an employee or a group of employees, by the Union, or by Management.
  - b. Only the Union, or a representative designated by the Union, may represent employees in such grievances. Designations may be done electronically.
  - c. Any employee or group of employees may personally present a grievance and have it resolved without representation by the Local Union provided that the Local Union will be given an

opportunity to be present and participate on behalf of the bargaining unit at all formal discussions between the grievant(s) and management pertaining to the grievance.

- d. All transmittals in this article shall be done by electronic means, unless electronic means are impractical.
- e. Grievance Resolution Meetings: The parties will have discussions to inform the other party of whom the Union and Management representatives and participants will be prior to incurring any travel, and per diem costs. Although cost is an important factor in this discussion, the primary focus should be to get the necessary people involved to resolve the dispute. The parties will follow Article 5 to determine who will be authorized travel and per diem; however, this provision in no way restricts the parties' right to select any number of representatives of their choice.

## **5. Exclusions:**

The following items are excluded from the grievance procedure to the extent provided by statutes and case law:

- a. Any claimed violation of 5 U.S.C. Chapter 73, Subchapter III relating to prohibited political activities (Hatch Act).
- b. Retirement, life insurance, or health insurance.
- c. A suspension or removal under 5 U.S.C. 7532 (national security reasons).
- d. Any examination, certification, or appointment.
- e. The classification of any position that does not result in the reduction in grade or pay of an employee.

The following items are excluded from the grievance procedure;

- f. Reduction-in-Force or furloughs of more than 30 days.
- g. Separations during a probationary or trial period. Grievance rights of probationary or trial employees will be consistent with their appellant rights before Merit Systems Protection Board (MSPB).
- h. Separation or a reduction-in-grade taken against specific employees who have no statutory right to appeal those adverse personnel actions to the MSPB. (This exclusion shall be null and void should a decision by mutual agreement of the Parties or by a third party be rendered that

a precedential change in case law occurred that approves or provides for grievances of this nature.)

- i. Bills of Collection for \$100 or more issued to employees, which are covered by special process in Article 4.
- j. Collections from accountable officers (unless case law makes it grievable).
- k. Determinations of exempt/nonexempt status under the Fair Labor Standards Act and related claims for compensation based on that determination.

## **6. Election of Forum:**

- a. Filing a grievance constitutes an election of forum. If the grievance forum is selected, then generally a complaint may not be filed on the same issue/same theory in the forums identified below.
- b. For those matters that are grievable, this procedure shall be the exclusive procedure for the parties and employees. However, nothing in this section shall prevent employees from electing instead to exercise their statutory rights to:
  - (1) File a formal Equal Employment Opportunity complaint.
  - (2) Appeal adverse actions (5 U.S.C. 7512) or actions for unacceptable performance (5 U.S.C. 4303) to the MSPB.
  - (3) File an unfair labor practice charge with the Federal Labor Relations Authority.
- c. If an agency listed above determines that they have jurisdiction to hear an appeal or complaint of an employee who filed a grievance in writing on the same issue, the grievance will be cancelled.
- d. Nothing in this article shall prevent an employee from filing a complaint with Office of Special Counsel.

## **7. Step 1 Grievance Procedure:**

- a. A Step 1 Grievance must be filed prior to filing a Step 2 Grievance except for Actions under 5 U.S.C. 7512 (Adverse Actions) or 5 U.S.C. 4303 (Unacceptable Performance), which are grieved directly at the Step 2 level.
- b. For all other grievances, the grievant and/or representative must file the Step 1 Grievance with the appropriate Step 1 Receiving Official with a carbon copy to the appropriate [Labor Relations](#)

[staff member](#) in writing within 30 days of the incident resulting in the complaint or the date the grievant first became aware of the matter.

- c. Step 1 Grievance notification: When submitting a Step 1 Grievance, the grievant or his or her representative shall:

- (1) Identify that this is a “Step 1 Grievance.” Grievants shall state this identification in the subject of e-mail or hard-copy document.
- (2) Identify the incident resulting in the complaint.
- (3) Identify the date of the incident.
- (4) Provide relief requested.
- (5) Optional—Provide suggested alternative dispute resolution techniques for resolving grievances.

- d. The parties may resolve the grievance using an alternative dispute resolution technique acceptable to both parties (see Section 12 on Settlements). If no settlement is reached, the Step 1 Deciding Official will transmit a written decision to the grievant and the Union within 30 days after transmittal of the Step 1 Grievance.

- (1) For Local Union and employee grievances, Management will carbon copy the appropriate Council Vice President.
- (2) For Management grievances, the Union will carbon copy the appropriate [Labor Relations staff member](#).
- (3) Included within such decision shall be a statement indicating the grievant’s right to submit a Step 2 Grievance.

## **8. Step 2 Grievance Procedure:**

- a. If the grievant is dissatisfied with the Step 1 Decision, the grievant may file a Step 2 Grievance with the appropriate Step 2 Receiving Official within 30 days of receiving the Step 1 Grievance Decision. If a Decision is not received within 30 days of the transmittal of the Step 1 Grievance, the grievant may file a Step 2 Grievance within 30 days of when the Step 1 Decision was due.
- b. In the case of grievances filed in response to a written decision letter notifying the employee of an action under 5 U.S.C. 7512 (Adverse Actions) or 5 U.S.C. 4303 (Unacceptable Performance) no Step 1 grievance is required. An employee must file a Step 2 grievance

within 30 days of the effective date of the action or within 30 days after receipt of the Agency's decision, whichever is later.

- c. A Step 2 Grievance will contain the following:
  - (1) Subject identifying that this is a "Step 2 Grievance." Grievants shall state this identification in the subject of e-mail or hard-copy document.
  - (2) A copy of the Step 1 Grievance and supporting documents, if applicable.
  - (3) A copy of the Step 1 Grievance Decision (if one was received).
  - (4) The issue(s) being grieved at this Step.
  - (5) Any additional supporting evidence available at the time. (Note: If additional information comes to hand after submittal, provide information and continue to attempt to resolve.)
  - (6) The relief requested.
- d. The grievant/representative is encouraged to include citations of alleged violation, misinterpretation, or misapplication of the Master Agreement, supplemental agreements, subordinate agreements, or any law, rule, regulation or policy affecting conditions of employment, if applicable.
- e. The grievant shall file the Step 2 Grievance with the appropriate Step 2 Receiving Official with a carbon copy to the appropriate [Labor Relations staff member](#).
- f. The parties may resolve the grievance using an alternative dispute resolution technique that is acceptable to both parties (see Section 11). If no settlement is reached, the Step 2 Deciding Official will transmit a written decision to the grievant and Union within 30 days after transmittal of the Step 2 Grievance. The written decision letter will identify the right to arbitration, supporting documents, and appropriate citations, if applicable. The Parties encourage including supporting rationale in the decision letter.
  - (1) For Local Union and employee grievances, Management will carbon copy the appropriate Council Vice President
  - (2) For Management grievances, the Union will carbon copy the appropriate [Labor Relations staff member](#)
- g. This response shall be the final Agency or Union decision on the grievance.

- h. If the grievance is not resolved, the matter may be referred to arbitration in accordance with Article 10.
- i. If mediation has not been used previously, the parties are strongly encouraged to engage in mediation prior to arbitration. This does not affect time limits for invoking arbitration.

## 9. Grievance Receiving Officials:

- a. Local Union or employee(s) file grievances with the respective individual(s) listed.

| <b>Organization</b>                                  | <b>Step 1</b>                                                     | <b>Step 2</b>                                                                |
|------------------------------------------------------|-------------------------------------------------------------------|------------------------------------------------------------------------------|
| JCCC Center                                          | Center Director                                                   | Assistant Director                                                           |
| Job Corps National Office                            | Assistant Director                                                | Chief of Staff                                                               |
| National Forests                                     | Forest Supervisor                                                 | Deputy Regional Forester                                                     |
| Regional Office                                      | Staff Director (if there is one) or<br>Deputy Regional Forester   | Deputy Regional Forester or<br>Regional Forester if Step 1<br>filed with DRF |
| Research Station, IITF, or<br>FPL                    | Assistant Station Director or<br>Program Manager                  | Assistant Station Director,<br>Deputy Station Director, or<br>Director       |
| Technology and<br>Development Center<br>(MTDC, SDTC) | WO Engineering Staff Director                                     | Associate Deputy Chief                                                       |
| Washington Office                                    | Staff Director (if there is one) or<br>the Associate Deputy Chief | Deputy Chief                                                                 |
| Law Enforcement &<br>Investigations Field (LE&I)     | Special Agent in Charge                                           | Deputy Director                                                              |
| Law Enforcement &<br>Investigations WO (LE&I)        | Assistant Director                                                | Deputy Director                                                              |
| Chief Information Office                             | Deputy Director of CIO                                            | Staff Director                                                               |
| Budget and Finance                                   | Deputy Director of B&F                                            | Staff Director                                                               |
| Enterprise Teams                                     | Director                                                          | Associate Deputy Chief                                                       |
| Other WO-detached (for<br>example CAT)               | Appropriate Staff Director                                        | Appropriate Associate<br>Deputy Chief                                        |
| Human Resource<br>Management                         | Deputy Director of HRM                                            | Staff Director                                                               |

|                           |                                                                        |                                                                        |
|---------------------------|------------------------------------------------------------------------|------------------------------------------------------------------------|
| Unit not identified above | Labor-Management Relations contact in Servicing Human Resources Office | Labor-Management Relations contact in Servicing Human Resources Office |
|---------------------------|------------------------------------------------------------------------|------------------------------------------------------------------------|

- b. Intermediate or National Union officials or their designees file grievances with the respective individual(s) listed.

| <b>Organization</b>       | <b>Step 1</b>                               | <b>Step 2</b>                      |
|---------------------------|---------------------------------------------|------------------------------------|
| Job Corps CCC VP          | Assistant Director                          | Chief of Staff                     |
| National Forest System VP | Deputy Regional Forester                    | Regional Forester                  |
| WO and WO-detached VP     | Appropriate Staff Director                  | Appropriate Associate Deputy Chief |
| Research VP               | Associate Deputy Chief, Research            | Deputy Chief, Research             |
| FSC President             | Associate Deputy Chief, Business Operations | Deputy Chief, Business Operations  |

- c. Management officials or their designees file grievances with the respective individual(s) listed at the right:

| <b>Organization</b>  | <b>Step 1</b>       | <b>Step 2</b> |
|----------------------|---------------------|---------------|
| Local Manager        | Local President     | Council VP    |
| Intermediate Manager | Council VP          | FSC President |
| National Manager     | FSC Grievance Chair | FSC President |

## 10. Authority:

- The party receiving the grievance will forward the grievance to the Deciding Official who will act upon the grievance. The name of the Deciding Official will be communicated to the grievant as soon as practical.
- The Deciding Official must have full authority to resolve all issues being grieved.
- The Step 2 Deciding Official shall not be the same as or subordinate to the Step 1 Deciding Official.

- d. In the case of a grievance involving disciplinary action, it is not appropriate for the grievance Deciding Official to be the same individual as the Deciding Official for the disciplinary action.

#### **11. Time Limits:**

- a. Time limits for this article start with “Day One” on the day following occurrence of the incident being grieved or when the grievant became aware of the issue, transmittal of the grievance to the Receiving Official, or the transmittal of the decision to the grieving party.
- b. The intent of the National Parties is for all participants to act within the time limits allowed within this article. However, time limits in this article may be extended by mutual written consent of the parties involved in the grievance.
- c. When information needed by Management to process a grievance is requested from a grievant or the Union, the time limits will be extended equal to the amount of time required to receive the request for information but not more than 15 days. If the information is not received during that time period, Management will render a decision based on the information they have at the time.
- d. When information needed by the Union to process a grievance or to determine whether a grievance exists is requested from Management, any applicable time limits will be automatically extended equal to the number of days it takes to either receive the information or a written statement that the information does not exist or its release is barred by statute.
- e. Failure by the grieving party to meet time limits, or to request and receive an extension of time, shall automatically terminate the grievance, unless mitigating circumstances prevail.
- f. Failure of the deciding official to meet time limits on grievances, or to request and receive an extension of time, shall result in the deciding party’s liability for the arbitrator’s fees and expenses, unless mitigating circumstances prevail.

#### **12. Settlement of Grievances:**

- a. Any grievance that is resolved will be documented in a written settlement agreement using the settlement agreement template (Appendix E), which the grievant, Union, and the Deciding Official will sign and date.
- b. Any settlement agreement constitutes a full and final resolution of any and all alleged issues raised in the grievance thereby terminating the grievance.



- c. If a party believes that another party has failed to comply with the terms of the agreement, the party may:
  - (1) File a new step 1 grievance requesting that the terms of the settlement agreement be specifically implemented, OR
  - (2) Reinstate the grievance at the next step from where the settlement occurred, if applicable.

Either 1 or 2 above must be done within 30 days following the date on which the grievant knew or should have known of alleged noncompliance.
- d. Any settlement must be consistent with the terms of this Master Agreement and applicable Supplemental Agreements.

**13. Grievance Termination:** A grievance will terminate—

- a. At the grievant's request.
- b. Upon termination of employment with the Agency, unless personal relief to the employee may be granted after termination of employment.
- c. Upon the death of the employee, unless the grievance involves a question of pay.
- d. Upon failure by the grieving party to meet time limits, or to request and receive an extension of time, unless mitigating circumstances prevail.